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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE V.GOPALA GOWDA

WRIT PETITION NO.3304/1994

BETWEEN:-

B.Sheenappa Shetty S/o  
Puttayya Shetty, Major,  
R/o Vaddarse Village,  
Udupi Taluk, D.K.

..PETITIONER

(By Sri K.S.Vyasa Rao, Advocate)

AND:-

1. The Land Tribunal,  
Udupi by its Chairman,  
Udupi Taluk, D.K.
2. Padmanabha Kini S/o  
Annayya Kini, Major,  
Giliyar Village,  
Udupi Taluk, D.K.
3. State of Karnataka,  
by its Revenue Secretary,  
Vidhana Soudha,  
Bangalore.

..RESPONDENTS

(By <sup>Ms.</sup>~~Miss~~ Bharathi Nagesh, AGA, for R3)

This C.P. was converted as W.P. U/s 17 of the KLR Act R/2 Articles 226 & 227 of the constitution of India and the Appeal No.LRA.1230/88 filed before the LRAA, and treated as W.P. and etc.

This W.P. coming on for hearing, this day, the Court made the following:-

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O R D E R

This Writ Petition has to be allowed on the short ground that the order passed by the Tribunal is not a speaking order and further, it has not considered the admission made by the second respondent land <sup>Lord M</sup>~~owner~~ with regard to the claim of the petitioner in respect of the land bearing Sy.No.110/1A and Sy.No.109/1A measuring 3.35 cents. In support of his claim the petitioner has produced the 'Moolageni Chit' executed by the second respondent in favour of the petitioner on 28th November 1962. Apart from the said claim, the second respondent landlord appeared before the Tribunal and conceded the claim and he has categorically <sup>M</sup>stated that he has no objection for grant of occupancy rights in favour of the petitioner in respect of the lands in question. However, the Tribunal granted occupancy rights in respect of the lands

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Reforms Appellate Authority by virtue of an amendment to the <sup>Act.</sup> again therefore, at the instance of the petitioner, the said case got transferred to this Court.

3. Learned Counsel for the petitioner

Mr. Vyasa Rao submits that, in view of no objection statement given<sup>n</sup> by the Land ~~owner~~ <sup>Lord</sup> before the Land Tribunal, the Tribunal was not right in not granting occupancy rights to the full extent of land claimed by him in respect of land bearing Sy.No.109/1A. No reasons are assigned, rejecting his claim to an extent of 1.45 cents. Therefore, he would submit that, this Court can quash the order in so far as not granting the full extent of land in respect of land bearing Sy. No.109/1A. Further, learned Counsel relying on the catena of Judgments rendered by the Apex Court where the order is vitiated there is no need to conduct further enquiry in such matters this court can grant occupancy rights in respect of land which

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was not granted, Submits that this Court can exercise its power under Article 226 and 227 of the Constitution of India. He further strongly relies on a Judgment of this Court reported in ILR 1990 KAR 889 wherein this Court has said, it is not compulsory on the part of the Tribunal to conduct enquiry if no objections are filed. In the instant case, no objection statement was filed before the Tribunal for grant of occupancy rights in favour of the petitioner.

4. Learned Addl. Government Advocate

Smt. Bharathi Nagesh submits that, no doubt the order is not a speaking order but, however the Tribunal has considered the statement made by the land <sup>Lord M</sup>~~owner~~ and the Moolageni Chit produced by the petitioner and it has perused the relevant records for grant of occupancy rights in respect of the land in question mentioned in the impugned order. Therefore she submits that, at best

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this may be a proper and fit case for remand for re-consideration on the basis of the claim made by the petitioner and the material evidence produced by him and no objection statement given by the second respondent.

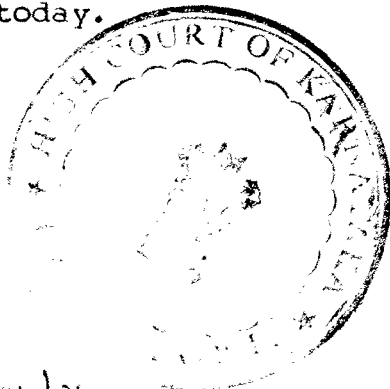
5. After hearing the learned counsel for the parties and perusing the record, I am of the view that, submission made by the learned counsel for the petitioner is tenable for the reason that, the impugned order is not a speaking order and the Tribunal has not recorded finding as to why it has not accepted the statement made by the land <sup>Lord</sup> ~~owner~~ while not granting the full extent of land in Sy.No.109/1A. The submission of the learned Govt.Advocate that matter may be remanded back to the Tribunal for fresh consideration and to consider the claim of the petitioner is also tenable. Hence, I pass the following order:



The writ petition is allowed. Rule made absolute. Impugned order is hereby quashed only to the extent of not granting full extent of land in respect of sy.No.109/1A. The grant of occupancy rights in respect of remaining extent is not disturbed. The Land Tribunal is further directed to re-examine the matter with respect to no objection given by the landlord and the Moolageni Chit produced by the petitioner and the matter may be considered for grant of remaining extent of land to an extent of 1.45 cents in Sy.No.109/1A of Vaddarse Village, Udupi Taluk, Dakshina Kannada District within three months from the date of receipt of this order.

Smt.Bharathi Nagesh, learned AGA is permitted to file memo of appearance within four weeks from today.

Sd/-  
JUDGE



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